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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
N.D. CALIFORNIA

99

8 Attorneys for Plaintiff John R. Botti

ADR

9
10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA

12 *J*
13 JOHN R. BOTTI,

14 Plaintiff,

15 v.

16 EQUIFAX INFORMATION
17 SERVICES LLC;
18 TRANS UNION LLC;
19 FIA CARD SERVICES, N.A.,

Case No.

CV 11-00113

COMPLAINT

(Fair Credit Reporting Act
15 USC § 1681 *et seq*)

DEMAND FOR JURY TRIAL

20 Jurisdiction and Venue

21 1. This action is brought pursuant to the Fair Credit Reporting Act, 15 USC
22 §1681 *et seq.* (FCRA). The court has jurisdiction over the FCRA claims pursuant
23 to 15 USC §1681p and over the state law claims pursuant to 15 USC § 1367.
24

25 2. Plaintiff brings claims against each of the defendants based on
26 violations of the FCRA and against the furnisher defendants based on violations of
27 the Calif Consumer Credit Reporting Agencies Act, Civil Code § 1785.1 *et seq.*
28

1 **Description of the Case**

2 3. Plaintiff's late father had a caretaker who lived in the family's home
3 in Los Altos, CA. In or about 2004, the caretaker stole plaintiff's identity. The
4 caretaker opened about 15 credit card, department store, and gas credit card
5 accounts in plaintiff's name.
6

7 4. Once plaintiff discovered his identity had been stolen, he filed a
8 police report with the Turlock, California, police department. He chose Turlock
9 because the caretaker's permanent address was Turlock, CA.

10 5. The fraudulent accounts appeared on plaintiff's credit reports
11 published by Equifax, Trans Union and Experian. Plaintiff disputed the fraudulent
12 accounts by sending letters to these three credit reporting agencies.
13

14 6. Experian eventually deleted all of the fraudulent accounts.
15 Defendants Equifax and Trans Union deleted all the accounts, except for one credit
16 card account (account number 4888931999323293), which originally was a
17 MBNA account. After Bank of America acquired MBNA, the account belonged to
18 defendant FIA Card Services, N.A., a wholly-owned subsidiary of Bank of
19 America.
20

21 7. At one point, Equifax deleted the FIA Card Services account, but
22 later reinserted it into plaintiff's credit report.

23 8. Plaintiff sent dispute letter after dispute letter to FIA Card Services
24 N.A., Equifax and Trans Union pointing out the account was there as a result of
25 identity theft. Plaintiff enclosed a copy of the Turlock P.D. report on numerous
26 occasions. Plaintiff submitted a fraud affidavit. Plaintiff filled out all forms
27 required by FIA Card Services relating to identity theft.
28

1 9. Defendant FIA Card Services, N.A. has been reporting the account as
2 charged off and past due since October 2004.

3 10. For reasons unknown to plaintiff, defendants to date have failed and
4 refused to delete the fraudulent FIA Card Services account from plaintiff's credit
5 files.
6

7 11. As required by the FCRA and California Civil Code § 1785.25, each
8 of the defendants was required to conduct a reasonable investigation as to whether
9 the account should be on plaintiff's credit files. However, defendants failed to
10 conduct a reasonable reinvestigation of the disputed account
11

12 **The Defendant Credit Reporting Agencies Failed to Comply with their**
13 **Duties under the FCRA after Plaintiff Informed Them He Was the Victim**
14 **of Identity Theft**

15 12. Plaintiff repeatedly disputed the mortgage loan accounts by
16 communicating with defendants Equifax and Trans Union.

17 13. Upon receiving plaintiff's disputes, each of the defendant credit
18 reporting agencies contacted the defendant furnisher FIA Card Services, N.A.
19 seeking verification that the account did not belong to plaintiff. On each of these
20 occasions, the defendant FIA Card Services N.A. verified that the account belonged
21 to plaintiff.

22 14. Plaintiff is informed and believes that the defendant credit reporting
23 agencies conducted no investigation save contacting the defendant furnisher FIA
24 Card Services N.A., which was the source of the inaccurate information in the first
25 place.
26

27 15. Moreover, under 15 U.S.C. § 1681c-2 of the FCRA, upon receipt of
28 plaintiff's fraud Affidavit and identity theft police report, the defendant credit

1 reporting agencies were obligated to block the information that was the result of
2 identity theft.

3 16. In violation of § 1681c-2, the defendant credit reporting agencies
4 failed to block the inaccurate information.
5

6 Damages

7 17. As a consequence of the defendants' violations of the FCRA and the
8 California Civil Code, plaintiff has been damaged.

9 18. Plaintiff's credit score has been impaired due to defendants' refusal
10 to delete the fraudulent credit card account.
11

12 19. Plaintiff purchased a home in Campbell, California in March 2008.
13 Because of the inaccurate FIA Card Services account's impact on his credit scores,
14 plaintiff's only available mortgage loan was option arm loan with high rate of
15 interest.

16 20. Because of the adverse FIA Card Services account, plaintiff has been
17 denied mortgage loans on three properties on six occasions.
18

19 The Parties

20 21. Plaintiff John R. Botti is a resident of Campbell, California.

21 22. Defendant Equifax Information Services LLC is a Georgia
22 corporation with its principal place of business in Atlanta, GA. Equifax is a
23 "consumer reporting agency" as defined by the FCRA, 15 U.S.C. § 1681a (f).
24

25 23. Defendant Trans Union LLC is a Delaware corporation with its
26 principal place of business in Chicago, IL.
27
28

1 24. Defendant FIA Card Services, N.A. is a wholly-owned subsidiary of
2 Bank of America. Defendant is subject to the requirements of 15 USC § 1681s2
3 and Civil Code § 1785.25.

4 **First Claim: Defendants' Violations of the Fair Credit Reporting Act, 15 USC §**
5 **1681i and § 1681c-2—Against the Defendants Equifax and Trans Union**

6 25. Plaintiff incorporates by reference ¶¶ 1 through 24.

7 26. The Fair Credit Reporting Act provides that if the completeness or
8 accuracy of any item of information contained in a consumer's file at a consumer
9 reporting agency is disputed by the consumer and the consumer notifies the agency
10 directly of such dispute, the agency shall conduct a reasonable reinvestigation to
11 determine whether the disputed information is inaccurate, or delete the item from
12 the file within 30 days of receiving the consumer's dispute notice. 15 USC § 1681i
13 (a) (1) (A). The Act further requires the credit reporting agency, within 5 business
14 days of receiving notice of the consumer's dispute, to provide notification of the
15 dispute to the person who furnished the information in dispute and requires the
16 credit reporting agency to "include all relevant information regarding the dispute
17 that the agency received from the consumer." 15 USC § 1681i (a) (2) (A). In
18 conducting its reinvestigation of disputed information in a consumer report, the
19 credit reporting agency is required to "review and consider all relevant information
20 submitted by the consumer."
21
22
23

24 27. Within the two years preceding the filing of this complaint, plaintiff
25 notified each of the Defendant credit reporting agencies of inaccuracies contained
26 in its reports on plaintiff due to identity theft and asked each of the defendants to
27 reinvestigate and correct the inaccuracies.
28

1 28. Each of the defendant credit reporting agencies failed to conduct a
2 proper reinvestigation of the item of information that plaintiff disputed.

3 29. Each defendants failed to review and consider all relevant
4 information submitted by plaintiff.

5 30. Each of the defendants failed to block the inaccurate information
6 that was a result of the identity theft as required by 15 U.S.C. § 1681c-2.

7 31. As a result of the above-described violations of § 1681i and §
8 1681c-2, plaintiff has sustained actual pecuniary damages and emotional distress.
9 Plaintiff will suffer additional damages in the future.

10 32. Plaintiff requests punitive damages pursuant to 15 USC § 1681n (a)
11 (2) against each of the defendants.

12 33. Plaintiff requests costs of the action together with reasonable
13 attorney's fees as determined by the court in accordance with 15 USC §§ 1681n (a)
14 and 1681o (a).

15 **Second Claim: Violations of the Fair Credit Reporting Act, 15 USC § 1681s-2(b)**
16 **Against the Defendant Furnisher FIA Card Services, N.A.**

17 34. Plaintiff incorporates by reference ¶¶ 1-24.

18 35. The FCRA requires a furnisher, after receiving notice from a credit
19 reporting agency that a consumer disputes information that is being reported by
20 that furnisher, to conduct an investigation with respect to the disputed
21 information, to review all relevant information, to report the results of the
22 investigation to the credit reporting agency, and, if the investigation reveals that
23 the information is incomplete or inaccurate, to report those results to all other
24 credit reporting agencies to which the furnisher has provided the inaccurate
25
26
27
28

1 information.

2 36. Within the last two years, the defendant furnisher provided
3 inaccurate information about plaintiff to the defendant credit reporting agencies.

4 37. Within the past two years, plaintiff notified the defendant furnisher
5 he disputed the inaccurate information it has been reporting.
6

7 38. The defendant credit reporting agencies notified the defendant
8 furnisher that plaintiff was disputing the information it has furnished concerning
9 his credit.

10 39. The defendant furnisher negligently and willfully violated 15 USC §
11 1681s-2(b) by failing to conduct an appropriate investigation, by failing to review
12 all relevant information, by failing to report the results to the credit reporting
13 agencies, by failing to modify, delete or permanently block the reporting of the
14 inaccurate information about plaintiffs, and by failing to report to the credit
15 reporting agencies that the accounts was disputed by plaintiff.
16

17 40. As a result of the above-described violations of § 1681s-2(b),
18 plaintiff has been damaged. Plaintiff continues to suffer actual damages and
19 plaintiff will suffer more damages in the future.
20

21 41. Plaintiff requests punitive damages pursuant to 15 USC § 1681n (a)
22 (2).

23 **Third Claim: Violations of the California Consumer Credit Reporting Agencies**
24 **Act, California Civil Code §§ 1785.25 et seq. Against the Defendant Furnisher FIA**
25 **Card Services, N.A.**

26 42. Plaintiff incorporates by reference ¶¶ 1-41.

27 43. California Civil Code § 1785.25 (a) states that a "person shall not
28 furnish information on a specific transaction or experience to any consumer credit

1 reporting agency if the person knows or should know the information is
 2 incomplete or inaccurate.”

3 44. The defendant furnisher negligently and willfully furnished
 4 information to the defendant credit reporting agencies that it knew or should have
 5 known was inaccurate.


6 45. Based on these violations of Civil Code § 1785.25 (a), plaintiff is
 7 entitled to the remedies afforded him by Civil Code § 1785.31, including actual
 8 damages, attorney’s fees, pain and suffering, punitive damages in an amount not
 9 less than \$100 nor more than \$5,000, for each violation as the Court deems
 10 proper.
 11

12 PRAYER

13 WHEREFORE, plaintiff prays for judgment as follows:
 14

- 15 1. Actual damages;
- 16 2. Statutory damages;
- 17 3. Punitive damages;
- 18 4. Costs of the action together with reasonable attorneys fees as
 19 determined by the court;
- 20 5. Such other relief as the Court may deem proper.

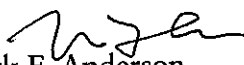
21 Dated: January 5, 2011. ANDERSON, OGILVIE & BREWER LLP
 22

23 
 24 By /s/ Mark F. Anderson
 25 Mark F. Anderson
 26 Attorney for Plaintiff

27 DEMAND FOR JURY TRIAL

28 Plaintiff demands a trial by jury on all issues.

1 Dated: January 5, 2011. ANDERSON, OGILVIE & BREWER LLP

2 
3 By /s/ Mark F. Anderson
4 Mark F. Anderson
Attorney for Plaintiff